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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,650	07/03/2001	John G. Apostolopoulos	10012168	9591
22879 7590 12/21/2010 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				
EXAMINER NEWLIN, TIMOTHY R				
ART UNIT 2424		PAPER NUMBER		
NOTIFICATION DATE 12/21/2010		DELIVERY MODE ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN G. APOSTOLOPOULOS, SUJOY BASU,
GENE CHEUNG, RAJENDRA KUMAR, SUMIT ROY,
WAI-TAN TAN, SUSIE J. WEE, TINA WONG, and BO SHEN

Appeal 2009-006098
Application 09/898,650
Technology Center 2400

Before KENNETH W. HAIRSTON, ST. JOHN COURTENAY, III,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

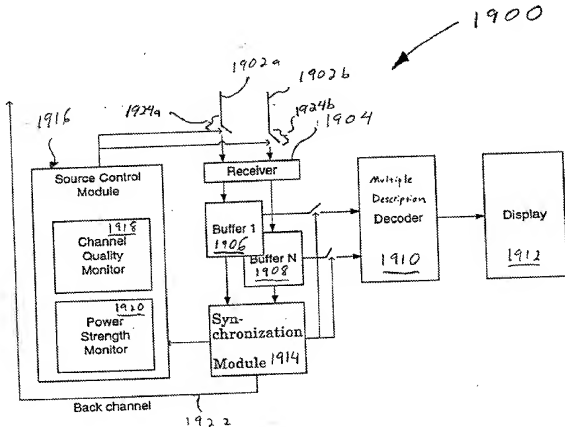
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-12 and 14-24. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' Figure 19 is reproduced below:



Appellants' Figure 19 and claimed invention are directed to a client 1900 that uses information from its power strength monitor 1920 to make a decision about how many of Multiple Description (MD) bitstreams to receive. For example, client 1900, based on the power strength determination, may prefer to receive a lesser number of MD bitstreams. The

client will communicate such a decision to a relevant base stations using back channel 1922. (*See* Fig. 19; Spec. 63-64).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A client for receiving multiple description media streams, said client comprising:

a multiple description receiving portion, said multiple description receiving portion adapted to receive a plurality of multiple description bitstreams, wherein said multiple description receiving portion receives a particular multiple description bitstream from a first server that said particular multiple description bitstream is stored on based on a level of service said first server is capable of providing and potentially receives said particular multiple description bitstream at a later time from a second server because said particular multiple bitstream was redistributed to said second server because said second server is capable of providing a higher level of service than said first server;

memory coupled to said multiple description receiving portion, said memory adapted to store said plurality of multiple description bitstreams in respective portions thereof;

a synchronization module coupled to said memory, said synchronization module adapted to blend said plurality of multiple description bitstreams;

a decoder coupled to said synchronization module, said decoder for decoding said plurality of multiple description bitstreams;

a source control module coupled to said synchronization module, said source control module for determining appropriate operation characteristics of said client, wherein said source control module comprises a power strength monitor that monitors power consumption by said client, wherein said client uses information from said power strength monitor to make a decision about how many of said multiple description bitstreams to receive; and

a user interface device coupled to said decoder, said user interface device adapted to present media previously encoded into said plurality of multiple description bitstreams to a user.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Bushmitch [hereinafter Matsushita]	EP 0 915 598 A2	May 12, 1999
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Kosaka	US 7,062,250 B1	Jun. 13, 2006
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John G. Apostolopoulos, *Error-Resilient Video Compression Through the Use of Multiple States*, 3 PROC., INT'L CONF. ON IMAGE PROCESSING 352 (2000).

The following rejections are before us for review:

1. The Examiner rejected claims 1-3, 5-10, 12, 14-20, and 22-24 under 35 U.S.C. § 103(a) as being unpatentable over Matsushita in view of Kosaka.
2. The Examiner rejected claims 4, 11, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Matsushita in view of Kosaka and further in view of Apostolopoulos.

ISSUE

The pivotal issue is whether Matsushita in view of Kosaka teaches that the “client uses information from said power strength monitor to make a decision about how many of said multiple description bitstreams to receive” as recited in representative claim 1.

PRINCIPLES OF LAW

The test for obviousness is what the combined teachings of the references would have suggested to the artisan. Accordingly, one can not show nonobviousness by attacking references individually where the

rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

The mere disclosure of more than one alternative does not constitute a teaching away because such a disclosure does not criticize, discredit, or otherwise discourage the solution claimed. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

FINDINGS OF FACT

The following Findings of Fact (FF) are supported by a preponderance of the evidence:

1. Kosaka teaches that if the remaining power is more than 10%, the control unit 1 sets the data communication or transmission speed to 64 k bps and effectuates the image communication mode and the voice communication mode. *See* col. 4, ll. 31-44; Figs. 1-2.
2. Kosaka teaches that if the remaining power is less than 10%, the control unit further checks if the power is more than 1%. If it is more than 1%, then the control unit sets the communication speed to a lower speed, 8 k bps, and enables only voice communication. If the power is less than 1%, both voice and image communication are disabled. *See* col. 4, ll. 29-30, 54-63; Figs. 1-2.
3. Matsushita teaches that the distributed Admission Control System incorporates intelligent mechanisms to prevent network congestion and improve quality of service (§ [0037]).

ANALYSIS

Appellants argue (App. Br. 12-13 (citing Matsushita, Abstract; col. 4, ll. 28-32)) that Matsushita teaches that all of the control decisions are made by the media push engines themselves, rather than *the client* as claimed. As such, Appellants argue that Matsushita teaches away from what is claimed (App. Br. 13). We are not persuaded by Appellants' argument.

We adopt the Examiner's findings of fact and conclusions as set out in the Answer. We focus our inquiry on the following facts:

Kosaka teaches that the client device (i.e., control unit 1) makes an autonomous decision about the type of data and whether to receive data (i.e., voice and/or image communication data) based on the power consumption data (FF 1-2).

The Examiner relied on Kosaka, not Matsushita, for the teaching of a client device making an autonomous decision about what data to receive. One can not show nonobviousness by attacking references individually (i.e., Matsushita not teaching a client making an autonomous decision about data to receive) where the rejection is based on a combination of references (i.e., the Examiner relied on Kosaka and Matsushita). *See Keller*, 642 F.2d at 426.

Thus, we are not persuaded by Appellants' argument (App. Br. 12-13), because while Matsushita does not teach that *the client* makes the autonomous determination of the data to receive, the Examiner relied on Kosaka for that teaching.

Furthermore, we agree with the Examiner's reasoning (Ans. 16-17) that Matsushita's servers make the decision as to what data the client is to receive because the network congestion is a system wide parameter (FF 3),

whereas Kosaka's client device power level is a local parameter that does not affect the rest of the network. Thus, we agree that the combination of the references (Ans. 17) is appropriate because if there is congestion, then a server is more appropriate to make a decision of data delivery to a client, whereas if the client is running low on power, the client is more appropriate to make a decision of data delivery to itself from the server. In other words, these functions are not mutually exclusive, nor can we find from the record before us that Matsushita expressly discourages the client making the decision based on its power determination. Thus, we are not persuaded by Appellants' argument that Matsushita teaches away from the combination because it does not criticize, discredit, or otherwise discourage the solution claimed. *See Fulton*, 391 F.3d at 1201.

Accordingly, we will sustain the Examiner's rejection of representative claim 1 and claims 2-12 and 14-24 which fall with claim 1 as no additional arguments of patentability were presented with respect to these claims.

CONCLUSIONS

The combination of Matsushita in view of Kosaka teaches that the "client uses information from said power strength monitor to make a decision about how many of said multiple description bitstreams to receive."

ORDER

The decision of the Examiner to reject claims 1-12 and 14-24 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

babc

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